

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1163 OF 2004

Mohan R. Mhatre

...Petitioner.

vs.

1. Herbertsons Ltd. & another.

...Respondents.

Mr.P.M.Patel, for Petitioner.

Mr.P.C.Pavaskar, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th July, 2006.

P.C.:-

1. By this petition, the petitioner challenges the order passed by the Industrial Court dismissing the complaint filed by the petitioner. The petitioner had gone to the Court claiming difference of salary for the period during which he was in the employment of respondent no.1. The petitioner was in the employment of the respondent no.1 till 1.7.1993. The Industrial Court has dismissed the complaint on the ground that the settlement on which the petitioner was relying on for claiming difference in the salary was between

respondent no.1 and the Union of its workers and it was applicable only to the permanent employees and the petitioner was not a permanent employee. The learned Counsel appearing for petitioner submits that he was a permanent employee. Firstly, he relies on the order at Exhibit "A" dated 29.6.1987. Secondly, he relies on the provisions of the standing order.

2. So far as the claim based on the order at Exhibit "A" is concerned, perusal of that order shows that the petitioner was to be on probation for a period of Six months and the employer has reserved right to extend the probation for a further period of six months. It was also provided that unless otherwise informed the period of probation automatically shall stand extended. Therefore, in terms of the appointment order, the petitioner will not attain the status of permanent employee by itself unless the petitioner is confirmed by an order in writing on completing the probation period.

3. So far as the reliance placed on the standing order is concerned, even according to the petitioner, it is clear that for attaining the status of permanent employee because of operation of the standing order, the petitioner has to establish that he has completed 240 days of uninterrupted service. It is clear that the petitioner has nowhere averred that he has completed 240 days of

continuous service on a particular day while working with the respondent no.1. It is further to be seen that the petitioner is making a claim for payment of difference in salary. Therefore, the cause of action of the petitioner will obviously accrue to him on the date on which the salary at the revised rate to the employees with whom the petitioner claims to have parity, is paid. That obviously was paid before 1.7.1993. The complaint has been filed on 12.10.1996. It is obvious that the claim of the petitioner was barred by the law of Limitation. It was argued that non-payment of salary gives recurring cause of action to the petitioner. In my opinion, as the petitioner was claiming difference in the salary and not the payment of the salary for a particular period, the petitioner is not justified in claiming that he has recurring cause of action.

4. After having heard the learned Counsel appearing for both the sides, I find that in any case the order passed by the Industrial Court does not result in failure of natural justice and therefore, does not call for any interference at the hands of this Court in its extra ordinary jurisdiction. The petition fails and is dismissed. Rule discharged. No order as to costs.